IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JOHN SCHRAMM, et al.	*	
	*	
v.	*	Civil No. JFM-02-3442
	*	
BRIAN ASHLEY FOSTER, et al.	*	
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OPINION

Plaintiffs John and Marla Schramm, individually and as guardians of Tyler Schramm, and Plaintiffs Mitchell, Biff, and Dorothy Thompson have brought this action against Defendants Brian Ashley Foster, Groff Brothers Trucking, LLC ("Groff Brothers"), and C.H. Robinson Worldwide, Inc. for personal injuries suffered by Tyler Schramm and Mitchell Thompson in a motor vehicle accident involving a tractor-trailer driven by Foster. Plaintiffs allege that Foster negligently operated the tractor-trailer by failing to stop at a stop sign and yield the right of way to the vehicle driven by Tyler Schramm. Now pending before me is plaintiffs' motion for partial summary judgment on the issue of Foster's negligence. For the reasons stated below, I will grant the motion.

I.

This case arises out of a catastrophic accident between a passenger vehicle and a tractor-trailer in Allegany County, Maryland. Foster was transporting a load of soy milk from the warehouse of Jasper Products, LLC in Joplin, Missouri, to White Rose Food Corporation in Cateret, New Jersey. Foster was an employee of Groff Brothers at the time.

On May 5, 2002, en route to New Jersey, Foster was traveling eastbound on I-68 in a tractor-trailer when he decided to exit onto Maryland Route 36. According to plaintiffs, upon reaching the stop sign at the end of the off-ramp, Foster failed to stop or yield the right of way to

on-coming traffic and proceeded northbound into the intersection, blocking all southbound lanes on Route 36. Tyler Schramm, a minor, was driving southbound in a pick-up truck with Mitchell Thompson on Route 36 at the time. Schramm's pick-up truck collided with the tractor-trailer and traveled underneath it until it came to a stop on the other side. The roof of the pick-up truck was severed as it proceeded underneath the tractor-trailer. Foster admitted that he had been driving in excess of the maximum driving hours allowed by law for operators of property-carrying vehicles.

Schramm suffered neurological damage from which he is not expected to recover. He remains in a semi-vegetative state and suffers from various complications, including seizures, caused by injuries to his brain. As a result of these injuries, Schramm requires assistance with all basic life functions. In addition, Thompson sustained severe and permanent injuries to his head and body.

Plaintiffs allege that Foster was negligent in failing to stop and yield the right of way to Schramm and Thompson.

II.

Plaintiffs have moved for partial summary judgment with respect to the liability of Foster. Summary judgment is appropriate only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). *See Celotex Corp. v. Catrett,* 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). A fact is material if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A disputed fact presents a genuine issue "if the evidence is such that a reasonable jury could return a verdict

for the non-moving party." *Id.* In deciding a motion for summary judgment, the court must construe the facts and draw all justifiable inferences therefrom in favor of the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 2513, 91 L.Ed.2d 202 (1986).

III.

A.

Under Maryland law, the "boulevard rule" governs the rights and duties of drivers at the intersection of a through highway and a road controlled by a traffic device, such as a stop sign. The rule is codified in Maryland Code (1977, 1999 Repl.Vol.) § 21-403 of the Transportation article, which states:

> (c) *Stopping in obedience to stop signs.*--If a stop sign is placed at the entrance to an intersecting highway, even if the intersection highway is not part of a through highway, the driver of a vehicle approaching the intersecting highway shall:
> (1) Stop in obedience to the stop sign; and
> (2) Yield the right-of-way to any other vehicle approaching on the intersecting highway.

The purpose of the rule is to expedite the flow of traffic on the intersecting highway. *Dean v. Redmiles*, 280 Md. 137, 147, 374 A.2d 329, 335 (1977); *Creaser v. Owens*, 267 Md. 238, 246, 297 A.2d 235, 245 (1972).

Maryland courts have defined the unfavored driver's duty to stop and yield the right of way as "mandatory, positive, and inflexible." *Dean*, 280 Md. at 147, 374 A.2d at 335. Furthermore, this duty persists during the entire time the unfavored driver is in the intersection and until he becomes a part of the flow of favored travelers or successfully traverses the boulevard. *Creaser*, 267 Md.at 240, 297 A.2d at 236 (citation omitted). The boulevard rule creates a statutory preference for the favored driver such that "[t]he unfavored driver, when sued

by the favored driver, is guilty of negligence as a matter of law in the absence of a showing of contributory negligence on the part of the favored driver." *Mallard v. Earl*, 106 Md.App. 449, 458, 665 A.2d 287, 292 (1995) (citing *Dean* at 147-48, 374 A.2d 329).

In the instant case, the parties dispute whether Foster actually stopped at the stop sign. Plaintiffs rely on the testimony of a witness to the accident and the report of accident reconstructionist Robert Farrell to support their assertion that Foster failed to completely stop at the stop sign.[1] Foster offers nothing to contradict this evidence except his own testimony that he stopped and looked for oncoming traffic. Even if Foster did stop, however, that did not relieve him of the duty to yield the right of way to through traffic during the entire time he remained in the intersection. It is undisputed that Foster had not completely traversed the intersection and, in fact, was blocking all southbound lanes, at the time of the collision.

Furthermore, the circumstances surrounding the accident support the conclusion that Foster failed to take due care in yielding the right of way to through traffic. The sight distance from the intersection in a northbound direction on Route 36 was 1200 feet. Pl.'s Ex. E, Farrell Report. The weather was clear and sunny, and the road was dry. Pl.'s Ex. C, Lavin Dep., at 50. If, as Foster testified, he saw Schramm's pick-up truck twenty-two to twenty-five feet away within four or five seconds after he left the stop sign, Foster Dep. at 48, 51, it would appear that Foster either looked and did not see what he should have seen with the use of reasonable care or that he did not look at all. Foster should have seen Schramm's car approaching from a distance

[1]I note that plaintiffs' evidence is not entirely persuasive on this issue. Teri Lavin, who witnessed the accident, testified that she saw Foster go through the stop sign without stopping. During her deposition she changed this testimony three times and finally admitted that Foster was already in the intersection when she first saw him. Lavin Dep. at 44. To the extent that Farrell's conclusion relies on this witness testimony, it is equally questionable.

of 1200 feet.[2] *See Johnson v. Dortch*, 27 Md.App. 605, 616-617, 342 A.2d 326, 333 (1975) (holding that unfavored driver who testified that he looked but did not see car approaching on through highway was nevertheless liable under the boulevard rule).

B.

Foster argues that the boulevard rule does not apply because Schramm was driving in excess of the speed limit and was therefore contributorily negligent.

Although a favored driver on a through highway may assume that unfavored drivers will obey the law and need not anticipate their violation of it, the favored driver does not enjoy an absolute right of way at all times and under all circumstances. *Dean*, 280 Md. at 149, 374 A.2d at 336 (citation omitted). Rather, he must operate his vehicle in a reasonably prudent fashion and may not proceed in the face of obvious danger. *Id.* at 148. Furthermore, the preference afforded the favored driver under the boulevard rule applies only if the favored driver is operating his vehicle lawfully. *Gazvoda v. McCaslin,* 36 Md.App. 604, 612, 375 A.2d 570 (1977).

However, "unlawful conduct alone does not render the Boulevard Rule inapplicable." *Burdette v. Rockville Crane Rental, Inc.* 130 Md.App. 193, 214, 745 A.2d 457, 468 (2000); *see*

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[2]If Schramm were speeding at 59 miles per hour, as Foster claims, and if the visibility was 1200 feet from the intersection, Foster should have seen Schramm's vehicle at least 14 seconds before the collision (assuming Schramm maintained a constant speed). If Schramm were going 50 miles per hour, as Farrell testified, then Foster would have been able to see Schramm at least 16 seconds before the accident. Given the fact the Schramm began decelerating at some point, Foster would have had even more time to observe Schramm's vehicle approaching. Although this may seem to be the sort of "nice calculation of speed, time, and distance" disfavored by the Maryland courts, it does not amount to a "hair-splitting" calculation which could not be expected of a reasonably prudent driver. *See Goosman v. A. Duie Pyle, Inc.*, 206 F.Supp. 120, 127 (D.Md. 1962).

also Dean, 280 Md. 137, 374 A.2d 329; *Mallard,* 106 Md.App. at 457, 665 A.2d at 291. To prove contributory negligence, Foster must also show that Schramm's alleged speeding proximately caused the accident. *Dean*, 280 Md. at 151-152, 374 A.2d at 338 ("the fact that the favored driver is violating the speed law does not become a jury question unless the evidence is sufficient to warrant a conclusion that the violation is a proximate cause of the injury"); *Poteet v. Sauter*, 136 Md. App. 383, 417, 766 A.2d 150, 168 (2001); *Mallard*, 106 Md.App. at 457, 665 A.2d at 291.

Maryland courts have cautioned that the relative rights of the parties at an intersection are not to depend on "nice calculations of speed, time, and distance" lest the purpose of the boulevard rule, to accelerate the flow of traffic on the favored thoroughfare, be eviscerated. *Dean*, 280 Md. at 150, 374 A.2d at 337; *Brown v. Ellis,* 236 Md. 487, 496, 204 A.2d 526, 530 (1964). In *Dean*, the court explained that this is especially true because "it is only in a rare instance...where it may fairly be said that the speed of the favored driver was a proximate cause of the accident in such a manner that the question should be considered by the jury." 280 Md. at 150, 374 A.2d at 337.

Maryland courts generally have held the unfavored driver liable notwithstanding the excessive speed of the favored driver. *See*, e.g., *Myers v. Bright,* 327 Md. 395, 405, 609 A.2d 1182 (1992) (mere fact that favored driver's speed exceeded the posted limit is "not enough to support a verdict based on negligence unless there is some further showing that this excessive speed is a direct and proximate cause of the injury."); *Creaser v. Owens*, 267 Md. 238, 297 A.2d 235 (1972) (neither excessive speed of favored driver nor obstructed view of unfavored driver excused unfavored driver from failing to yield the right of way); *Sun Cab v. Cusick*, 209 Md.

354, 121 A.2d 188 (1956).

Even in instances where the favored driver's speeding is compounded by other traffic violations, the courts have been hesitant to abrogate the boulevard preference and have rarely found that such infractions constitute a "contributing factor" to the ensuing accident. *Hensel v. Beckward*, 273 Md. 426, 431, 330 A.2d 196, 199 (1974) (speeding and operating at night without headlights not considered a contributing factor); *Dortch*, 27 Md.App. at 616, 342 A.2d at 333 (speeding, driving while intoxicated, driving without headlights, and driving on wrong side of street were not contributing factors); *Tippett v. Quade*, 19 Md.App. 49, 309 A.2d 481 (1973) (speeding and drinking did not constitute contributory negligence).

Foster relies on Farrell's initial calculation of Schramm's speed at 59 miles per hour to argue that Schramm was contributorily negligent where the posted speed limit was 50 miles per hour.[3] However, even if true, Foster fails to show that this speed of nine miles per hour above the limit proximately caused the accident. To allow Foster to rely on this departure would be to allow the sort of "nice calculations" the Maryland courts have warned against. *See*, e.g., *Goosman v. A. Duie Pyle, Inc.*, 206 F.Supp. 120, 127 (D.Md. 1962) ("the prohibition against making nice calculations...pertains only to those close, hair-splitting calculations which cannot be expected of a reasonably prudent favored driver when immediately confronted by an intrusion upon his right of way. Where the times and distances are great, the calculations are no longer 'nice,' and the prohibition is inapplicable.").

[3]Farrell later testified in deposition that he made a mistake in calculating Schramm's speed in his original report. Using a different formula, Farrell testified that he believed Schramm was actually traveling approximately 50 miles per hour. Farrell Dep., at 54.

In any event, Foster has failed to present any evidence beyond mere speculation that, had Schramm not exceeded the speed limit, he would have been able to avoid the accident. *See Kopitzki v. Boyd*, 277 Md. 491, 496, 355 A.2d 471, 474 (1976) ("if it can be shown that the favored driver could have avoided the accident if he had been operating lawfully and with due care, then the negligence of the favored driver should be an issue for the jury.").

For the foregoing reasons, plaintiffs' motion for partial summary judgment will be granted.

A separate order is being entered herewith.

Date: August 23, 2004

/s/
J. Frederick Motz
United States District Judge

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ORDER

For the reasons stated in the accompanying memorandum, it is, this 23rd day of August 2004,

ORDERED that partial summary judgment is entered in favor of plaintiffs on the issue of Defendant Foster's negligence.

/s/
J. Frederick Motz
United States District Judge